

of her claim and the value of the land. Krishnan Pillay was to ask Mr. Somasundrum, plaintiff's solicitor, to get Lot 324 released from attachment and Rahman Chetty was to convey Lot 324 together with other land to defendant in satisfaction of his claim. The Plaintiff denies having consented to or indeed having any knowledge of any such arrangement. The defendant and Mr. Goh both say that they regarded Krishnan Pillay as acting for her in the matter but the evidence of any authority so to act is very vague and slender. I have no doubt that negotiations did take place and that efforts were made to persuade the plaintiff to release the attachment.

A letter was put in which was received by the Official Assignee dated 2nd December, 1931, and purporting to bear her thumb impression. At first she denied having sent this letter but later she wavered and I think the probability is that it was written by someone on her behalf, she being an ignorant woman, unable to read or write. In that letter the negotiations are described and it is stated that the defendant personally undertook to pay the money due from the Chetty to the plaintiff if she would consent to the conveyance to him. The defendant denies having given any such undertaking but if any definite arrangement was concluded which seems doubtful I consider that the probability is that it is more correctly stated in that letter than in the version now put forward by the defendant.

However that may be the onus is upon the defendant to satisfy me that there was such acquiescence on the part of the plaintiff as amounts in law to estoppel. He has failed to do so. The circumstances which must be present in order to raise such estoppel are concisely set out in *Halsbury* 1st Edition Vol. 13 page 167. One of them is that there must be a mistaken belief on the part of the defendant on the faith of which he expends money or does some act. That element is not present here. The defendant was aware of the attachment and of the whole of the facts of the case. Furthermore I find that if any arrangement was made the defendant had failed to carry out his part of it and that as far as the plaintiff is concerned there has been a total failure of consideration.

There will be judgment for the plaintiff in the terms of the prayers in the Statement of Claim with costs.

Liberty to apply in respect of prayer (c).

Judgment accordingly.

Solicitors for the Plaintiff—*Sundrum & Khoo.*

Solicitors for the Defendant—*Wreford & Thornton.*

[CIVIL DISTRICT COURT JURISDICTION]

BULL, D.J.

June 13, 1931.

[SUPREME COURT APPELLATE CIVIL JURISDICTION]

SPROULE, Ag. C.J.

September 13, 1931.

SIMPSON, J. October 2, 1931.

In the matter of District Court Distress
Case No. 1749 of 1931.

and

In the matter of the application of one
Yeo Wee Sui made in the said matter
and

In the matter of section 13 (1) of Ordinance
No. 101 (Courts).

SHAIKH SAHIED BIN TALIP BIN JAAFAR
BIN TALIP.....Plaintiff.

v.

KHOO KANG CHEK.....Defendant.
[S'PORE DISTRICT COURT DISTRESS No. 1749 of 1931]
[SINGAPORE ORIGINATING MOTION No. 6 of 1931]

*Distress.—Goods of sub-tenants, whether
liable to seizure—"Apparent possession"—Civil
Procedure Code, S. 725.*

Property found on certain premises was seized by the Bailiff of the District Court under a Writ of Distress to recover the arrears of rent of the premises due by the tenant. Certain persons claiming to be sub-tenants of the tenant, applied for the release of the property seized on the ground that such property was theirs and had been seized in that part of the premises occupied by them as such sub-tenants.

Held, by Bull, D.J., that the property in question was in the apparent and actual possession of the sub-tenants and not in the "apparent possession" of the tenant within section 725 of the Civil Procedure Code, and must be released as not being liable to seizure.

Upon revision by the Supreme Court under the jurisdiction conferred by section 13 (1) of Ordinance No. 101 (Courts).

Held, by Simpson, J., upholding the decision of Bull, D.J. (Sproule, Ag. C.J., dissenting) that "apparent possession" in the section above referred to means physical possession, as distinguished from possession in law or constructive possession and that the person whether the tenant or sub-tenant who upon inquiry is found to be in physical occupation of any part of the premises is deemed to be in apparent possession of the goods seized in such part of the premises and therefore the property in question was not in the "apparent possession" of the tenant for the purpose of section 725 of the Civil Procedure Code and was not liable to seizure.

Held, by Sproule, Ag. C.J., that the law as enacted in Section 725 is not intended to affect the landlord's common law lien over all such goods as are in the manifest or ostensible possession of the tenant nor to exempt the goods of strangers (whether sub-tenant or not) found upon the demised premises from being levied in distress for arrears of rent.

The Court consisting of two judges not agreeing, the Judgment of the District Judge stands.

Obiter, by Sproule, Ag. C.J., and Simpson, J.—The District Judge has no power to compel sub-tenants to pay their sub-rents in arrear to the principal tenant as a condition for the release of their goods seized in pursuance of a Writ of Distress issued on the application of the landlord against the principal tenant.

Applications to the District Court by persons claiming as sub-tenants of the Defendant (tenant of the demised premises) for the release of certain property seized under a Writ of Distress. The applications were heard by the District Judge on the 14th June, 1931.

The plaintiff was the landlord of a house known as Municipal No. 192 Jalan Besar, Singapore. These premises were let to the defendant at a monthly rental of \$70 upon condition that the defendant was not to sub-let the premises or any part thereof without the consent in writing of the plaintiff.

On the 27th of May, 1931, a Writ of Distress was issued at the instance of the plaintiff against the defendant for \$200.00 due for arrears of rent.

Acting under the Writ of Distress the Bailiff of the District Court seized all the goods found on the said premises.

On or about the 4th of June 1931 the plaintiff received a notice from the District Court to the effect that certain sub-tenants of the defendant had applied for the release of the property seized under the Writ on the grounds that such property belonged to the applicants and not to the defendant.

The District Judge after hearing the evidence ordered the release of the property claimed by the applicants.

BULL, D.J.—I allowed these claims and ordered the release of the property claimed as I found that the applicants were sub-tenants of the defendant Khoo Kang Chek and in occupation of the respective parts of the house which they rented from him and in which they lived and in which the property which they claimed had been seized. The goods seized were under these circumstances clearly in the apparent and actual possession of the sub-tenants and not in the apparent possession of the tenant Khoo Kang Chek.

2. Exhibit (1) shows it had been a condition of the agreement under which Khoo Kang Chek had taken the tenancy that he should not sublet or assign the tenancy of the house or any part thereof without the written consent of the landlord. This agreement was in English and there is no evidence that this condition was ever explained to him or that he understood it or assented to it. The applicants were not cross-examined as to their knowledge of this condition and I think it highly improbable that they knew

anything about it. But knowledge or lack of knowledge on their part of such a condition would seem immaterial—unless something in their conduct amounts to an estoppel and there is nothing in the evidence in this case to raise an estoppel—for it seems that the ordinary meaning of the words of section 725 is not to be limited or restricted in their application by considerations of notice or knowledge not accompanied by a declaration or conduct amounting to an estoppel.

3. The effect of section 725 in such a case as this is to afford the sub-tenants protection against distress even under circumstances where they would not have been protected in England under the Law of Distress Amendment Act 1908 for that Act does not apply to undertenants whose tenancy has been created in breach of any covenant in the head lease; and in any case the landlord there can prevent the Act applying by giving notice in writing within a reasonable time that the undertenancy is contrary to his wishes.

4. In view of this and in view of the remarks of Law, J., in *re Chuah Eu Kay*, 4 S.S. L.R. 15 where he questioned "the policy of the legislature in having made the law different..... from what it is in England as it might operate hardly upon landlords" it seems desirable to examine the reasonableness of this result a little more closely.

5. First we may recall that the power of distress appears to have been derived from the ancient feudal law under which a custom grew up of the lord seizing and impounding chattels found upon the land as a means of compelling performance of feudal services. Although the custom appears to have had little better foundation than the might of the lord to do much as he pleased, it appears to have been substituted for a forfeiture of the tenants' estate and in its origin to have been for the benefit of the tenant. It became however a means of great oppression and continual enactments were passed up to 1 and 2 Ph. & M. for the protection of tenants; but in 2 W & M legislation swung over in favour of the landlord.

6. The English Common Law rule and the effect of the Act of 2 W & M were very clearly explained by Blackburn, J. in *Lyons v. Elliot*, (1876) 1 Q.B. D. 210 at p. 213 in the following words five of which I have ventured to underline.

"The general rule at Common Law that whatever was found on the demised premises, whether belonging to a stranger or not, might be seized by the landlord and held as a distress till the rent was paid or the service performed. This state of things produced no harm, because at Common Law the landlord not being able to sell the

distress, he generally gave up the goods as soon as he found they were not the tenant's, as his continuing to hold them would not induce the tenant to pay. But in the reign of William and Mary, a *very harsh and unjust law* (2 W. & M. c. 5) was passed by which the right was given to the landlord to sell any goods seized, and to apply the proceeds to the payment of the rent unless the tenant or owner of the goods first paid it; and this held out a great temptation to a landlord to seize the goods of a stranger although he knew that they were not the tenant's."

7. We may note in passing that the right of distress because of its harshness and of its deviation from the feudal law has been rejected in some of the States in the U.S.A. which have followed the English Common Law.

8. Recalling the words of Sir Benson Maxwell, C.J., in *Choa Choon Neo v. Spottiswoode*, (1869).

"In this Colony so much of the Law of England as was in existence when it was imported here and is of general... policy and adapted to the conditions and wants of the inhabitants, is the Law of the land; and further, that Law is subject, in its application to the various alien races established here to such modifications as are necessary to prevent it from operating unjustly and oppressively on them."

We see how wisely the local Legislature long ago in the Distress Ordinance of 1878, which Sections 725 & 728 follow, modified the English Law of Distress in accordance with these principles.

9. Practically all the poorest classes in the town, of necessity, live in rooms which are rented by sub-tenants from a tenant-in-chief. They are nearly all of a different nationality to that of the house owner and for the most part are of a different religion. It would be manifestly unjust harsh and oppressive if they were to be stripped of practically all their few small belongings because the head tenant to whom they may owe no rent has not paid his rent to the landlord of whom probably they know nothing.

10. It in no way softens the harshness and the injustice that the landlord is able to produce an agreement which the chief tenant has signed in which there purports to be a condition that there is to be no sub-letting without the consent in writing of the landlord.

11. In England, where there is usually a careful examination of the head lease before a sublease is taken and where there are not the difficulties of many races and tongues and such depths of ignorance and illiteracy as we have to deal with here, there, not much injustice may

in practice flow from the limitations of the Law of Distress Amendment Act 1908.

12. But here the problem and responsibilities are very much deeper and wider. It is not sufficient to waive a legal form. The circumstances of the particular case and the conditions of the parties to which it is to be applied must be carefully examined to prevent injustice being done.

13. In this case the agreement conditioned against underletting appeared to me to be probably a subterfuge, a piece of legal machinery designed with an eye half-cocked on the English Law, whereby it was thought that the sub-tenants' property might be rendered liable to distress in spite of the provisions of section 725 C.P. Code and of the judicial decisions thereon. For it is notorious that the majority of shop houses in the town are sub-let to numerous sub-tenants; especially in the locality in which the house in this case is situated—it is only by sub-letting that the chief tenants have been able to pay the high rents demanded by the landlords; as the landlords well know.

14. In spite of the agreement against underletting I was very far from being satisfied that the landlord and his agent were not very well aware that there were sub-tenants in this house; the agent in fact admits having seen the applicants in the house. I further think it probable that they knew that the defendant intended to sublet parts of the premises when he was asked to sign the tenancy agreement and that they knew that he could probably not afford to pay the \$70.00 rent per month unless he did so.

15. I may add that while it appears to have been the settled course of practice in the District Court for many years to follow the judgments of Collyer, J., in *Fong See Kye v. Shaik Madar*, 4 S.S.L.R. 1 and of Law, J., in *Re Chuah Eu Kay*, 4 S.S.L.R. 15 under the old Distress Ordinance 1878, yet I understand it has been the practice and it has certainly been my practice where the sub-tenant owes rent to the tenant-in-chief against whom the Writ of Distress has been issued, not to order the release of the sub-tenant's property except upon condition that he pays to the bailiff what rent he owes to the tenant-in-chief and if necessary to order so much of the sub-tenant's property to be sold as will cover such rent due to the tenant-in-chief; and this seems to have worked satisfactorily.

16. I may add that many non-legal but interesting arguments were submitted to me by Counsel for the plaintiff of which I may mention his suggestion that if the law is in accordance with the settled practice it affords a perfect machinery for frauds upon landlords. There is

no doubt a danger. I have recently been impressed with this danger for there have been some cases in which it has been clear that the landlords have not in fact really known who their tenants have been nor have they been at trouble to know so long as the rent has been paid. But against such mischances the remedy lies in the landlord's own hands. They are certainly in a better position to protect themselves against fraud than the less fortunate sub-tenants.

The plaintiff moved the Supreme Court in its Appellate Civil Jurisdiction by Originating Motion calling for the proceedings in the District Court for the purpose of revision by the Supreme Court. The application for revision came on for argument before Sproule, Ag. C.J. and Simpson, J., on the 29th June.

Walters for the plaintiff.

The defendant and the applicants to the District Court did not appear.

Cur. Ad. Vult.

SPROULE, AG. C.J.—This matter has come before the Supreme Court by way of revision, and because of the importance of the principle involved, I have invited my brother, Mr. Justice Palgrave Simpson, to help by sitting with me *in banco*.

We are concerned with the construction of section 725 of the Civil Procedure Code, not, of course, merely academically, but in its application to the facts of this concrete case.

Section 725 (1), dealing with writs of distress, says:

In pursuance of the writ aforesaid, the Sheriff shall seize the moveable property found in or upon the house or premises mentioned in the writ and in the apparent possession of the defendant..... or so much of it as may be sufficient to meet the landlord's claim and the costs of seizure.

We have to substitute for the Sheriff, the bailiff of the District Court; and the "defendant" is the tenant.

The Sheriff or Bailiff is the landlord's agent and can only seize lawfully what the landlord may seize. Section 725(2) sets out a list of what he may not seize; and our decision must needs be concerned, incidentally, with the question how far that list is exhaustive.

Section 724, however, renders the issue of the writ a judicial and not a ministerial act. It is probable, therefore, that the landlord is thus protected from an action for damages for wrongful seizure and trespass to goods, but not so the Sheriff, except in so far as the Public Authorities Protection enactments may operate in his aid.

With this short preface, I proceed to deal with the facts of this case before us.

The landlord acted by his attorney, who was also rent-collector. The attorney obtained a writ of distress, and the Bailiff seized all the goods in and upon the demised premises.

Thereafter three claimants appeared, and an issue was tried under section 728. The claimants said they were under-tenants and that the goods seized (or most of them) were theirs. Evidence was admitted (whether relevant or not) and accepted, that their sub-rents had been paid up to date and without arrears, to their principal tenant, the tenant of the house from the landlord.

The tenant's lease contained a proviso forbidding under-letting without the landlord's consent, but his Counsel bases no argument upon that proviso before us. On the other hand the learned District Judge has held, and, if I may say so, with good sense, that the attorney is almost certainly bound to have known that his tenant would and had under-let portions of the demised premises.

That must, however, upon the evidence, be the utmost limit of belief or suspicion to be imputed to the landlord and his agent the bailiff. The attorney did not know what portions of the house had been under-let, nor to whom. He says that he remembers having seen the three claimants on or about the premises when he went rent-collecting, but never knew they were under-tenants; but the three claimants go further and swear that they had never seen the landlord or attorney at all before coming into Court.

There had been an earlier writ of distress levied three months before, and goods of at least one of the three claimants had then been seized without protest, claim or objection; but that affair had been settled before sale and the goods released.

Regarding the present seizure, again, there is no evidence of any protest, claim, or objection at the time of seizure. Nor is there evidence of any protest, claim, or objection at the time of seizure. Nor is there evidence of sign-boards, labels, locked doors, or any other indication whatsoever to the eye or mind, that the goods seized in the tenant's premises did not belong to the tenant, if indeed such matters are relevant.

The learned District Judge has accepted the claimants' evidence that they were sub-tenants and that the goods claimed were theirs, and has ordered the release of these. The landlord applies to us to reverse that order. The tenant, it seems, has absconded, and the claimants do not appear before us to support the order of release.

The learned District Judge leans strongly upon the facts accepted by him that the claimants were undertenants and had paid their sub-rents up-to-date and were not in arrear. He says that

in cases where undertenants' goods are seized for the principal tenant's debt, but the undertenants themselves are in arrear with their sub-rents his practice is not to order release of the goods unless and until the undertenants have paid to the bailiff the arrears of rent they owe to the principal tenant.

To my mind the value of the District Judge's careful and able grounds of judgment is entirely destroyed by that statement. There is no justification in the Code for any such practice. Undertenants' goods are seized by the principal landlord either lawfully or wrongfully. If lawfully seized, they cannot be released conditionally or unconditionally, and the bailiff who releases them is liable to the landlord. If wrongfully seized, then the bailiff cannot detain them and is liable in damages if he does. If the practice is right, then it seems to follow that the seizure was lawful. In any case the practice in this country is a dangerous one. Once known, it is bound to be a source of temptation to tenants and undertenants to combine with the aid of bogus rent receipts to defeat the just claims of the landlord.

The question then arises what are the landlord's rights. In common law he can sue for the rent or claim ejectment. But he has, further, a lien upon the goods in and upon his demised premises, whether they be the goods of a stranger or not, for the payment of his rent. The whole theory and practice of distraint are based upon the common law right.

The landlord's common law right to seize and sell goods of strangers found upon the premises has never been questioned in England. It has been found to operate harshly, and therefore statutes have been enacted to mitigate its severity. But each and all of these enactments merely create exceptions, and thereby leave the right unchallenged. Incidentally, certain of these exceptions in England deal with undertenants' goods, but our own Legislature has not thought fit to adopt or follow them. Nearly all the rest are contained in our section 725 (2).

If our law was intended to exempt the goods of strangers from being levied in distress and thus invade the common law right of a landlord, it has failed to express that intention in plain words save to the extent of the provisions contained in section 725 (2).

If our law was intended to exempt the goods of strangers who are undertenants from being seized in distress, it has never created that exemption, as English legislation has, in plain words. The main issue before us appears to be whether we can read such an exemption into the words

"and in the apparent possession of the tenant."

Collyer, J., in *Fong See Kye v. Shaik Madar*, 4, S.S.L.R. 1, and Law, J., in *Chuah Eu Kay's* case, 4 S.S.L.R. 15, appear to have done so. With very great respect, I think they were both wrong, although, indeed, Law, J., merely followed the previous judgment.

How can the words "in the apparent possession of the tenant" be twisted or elongated to mean, "and not being in fact the goods of an undertenant"? That appears to me to be construction gone mad.

The word "apparent" is capable of two meanings. One is manifest, or palpable, to the eye or mind. The other is seeming or ostensible, with a hint that things may not really be what they seem.

When the section speaks of apparent possession in relation to this subject of goods in and upon demised premises, obviously with an eye upon a landlord's lien at common law upon all such goods, even of strangers, for payment of his rent, I think it clearly contemplates physical possession and excludes such abstractions as constructive possession or legal possession. Those concepts would be more appropriate to goods *not* in or upon the demised premises, but over which the tenant is entitled to legal dominion.

What, then, does section 725 (1) intend by the inclusion of these words? If goods upon the demised premises are in the manifest or palpable physical possession of the tenant, they are clearly liable to seizure in distress. No departure from the common law rule can possibly be read into such a provision.

Supposing, however, that the section was intended to refer to seeming or ostensible physical possession by the tenant, capable of disproof, what is its effect? To my mind we can only interpret the Legislature as saying that even if the tenant's physical possession is merely ostensible, and capable of disproof, then the sheriff shall nevertheless seize such goods in or upon the demised premises; and a later section says that they shall be sold.

Section 728 provides that the tenant or the owner of the goods can claim and the sheriff interplead. That is not meaningless, to my mind, but refers directly to the sole exemptions which our Legislature has been pleased to adopt from English statute law. The tenant can claim under section 725 (2) a, b, c, others under the other clauses of the sub-section. What has *not* been borrowed is the later English statutory provision in favour of undertenants.

With great respect, therefore, I differ from Law, J.'s statement in the *Chuah Eu Kay's* case that these critical words as to apparent possession were intended in disfavour of the landlord. I can only read them as meaning that even ostensible and disprovable or disproved possession by

the landlord will not protect goods of strangers (whether undertenants or not) found upon the demised premises from seizure and sale for arrears of rent.

If our Legislature had in mind the very great prevalence of under-letting in our industrial centres, it appears to me to have been concerned to protect, not the undertenants, but the principal landlord, in such cases. If I am right, then the Legislature had good reason. The principal tenant is in most cases a man of straw, dependent upon successful sub-letting not merely for the raising of the principal rent, but in many cases for his means of livelihood.

He is an alien, often, with good opportunities of absconding without payment. His under-lessees are likely to be of his own race and class and disposed to help him rather than his landlord, perhaps even to the extent of accepting forged receipts for sub-rent to conform to known District Court practice and so facilitate release of goods.

If I am wrong, the Legislature can very easily show by amendment what their true policy is.

Meanwhile, and for the reasons indicated, I find the learned District Judge's order to be indefensible.

My learned colleague, however, takes a view directly opposite, and therefore, in accordance with the usual rule, the judgment of the learned District Judge must stand.

SIMPSON, J.—The question raised is whether the goods of sub-tenants can be distrained when the tenant is himself in occupation of part of the demised premises. This question turns upon the meaning of the words "in the apparent possession of the defendant" (the tenant) in Section 725 (1) of the Civil Procedure Code.

By common law all goods found on the demised premises, whether they belong to the tenant or to strangers, were liable to distress because the landlord had a lien in respect of the place in which they were found and not in respect of the person to whom they belonged (*Woodfall on Landlord and Tenant* 22nd Edition p. 557), but this harsh rule has been much relaxed in England by statute.

In the Civil Procedure Code the common law rule has also been relaxed because the goods to be seized must not only be found in or upon the demised premises, but must also be "in the apparent possession" of the direct tenant of the landlord at whose instance the writ of distress has been issued, and furthermore certain goods, e.g. those of lodgers in furnished lodging houses and temporary guests at an inn, are exempted

from seizure by the second sub-section of Section 725.

The word "possession" is one that gives rise to difficulty. "There is, perhaps, no legal conception more open to a variety of meanings than possession" (*per Fry, L.J.*, in *Lyell v. Kennedy*, 18 Q.B.D. p. 796, at 813). To quote from *Pollock & Wright* on "Possession in the Common Law" at p. 1. "Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others." Possession is primarily divisible into possession in fact (physical control) and possession in law, and possession in fact is *prima facie* evidence of possession in law. (*Pollock & Wright*, p. 20). A simple example of possession in law is possession by a master through his servant. Another use of the word is "constructive possession" where the right to possess is separated from actual possession in fact (p. 27).

The word "apparent" itself has more than one meaning. The primary meaning is "visible to the eye," while a secondary meaning is "clear or manifest to the understanding."

The District Court Bailiff when executing a Writ of Distress may not seize various goods, e.g. the goods of lodgers and of guests at an inn, and, if "apparent" meant only "visible to the eye," the Bailiff would not be able to differentiate between goods he could seize and goods he could not. The Bailiff would certainly have to listen to claims of ownership made by lodgers. Also in many cases the tenant would not be personally known to the Bailiff and there, if he trusted to his eyes alone, he would be unable to know whether goods were in the apparent possession of the tenant or of somebody else.

The primary meaning of "visible to the eye" cannot therefore be the meaning of "apparent" in this connection and I consider that it means "clear or manifest to the understanding" after hearing what is said on the premises and making such inquiries regarding the actual occupation of the premises as the circumstances of the case may suggest. Whichever meaning of "apparent" is correct, "apparent possession" must mean physical possession, as distinguished from possession in law or constructive possession, for the Bailiff, so far as the goods are found to be in a house or in a particular room, can only be guided by his eyes.

The person, whether tenant or sub-tenant, who upon enquiry is found to be in occupation of

any part of the premises is, in my opinion, *prima facie* in physical possession of the goods in that part of the premises and therefore in "apparent possession" of those goods for the purpose of the Section. So far as there is no person other than the tenant in occupation of the whole or a definite part of the premises, then the goods are in the "apparent possession" of the tenant and distrainable although he may not be the owner.

Cases were cited at the hearing on the meaning of "apparent possession" in Section 8 of the Bills of Sale Act 1878, but those words are defined in Section 4 of the Act and I do not consider that the special definition in that Act is a safe guide as to the meaning of the same words in our Ordinance though the definition draws the distinction between physical possession and formal possession. See also Section 4 of Ordinance No. 40 (Bills of Sale).

Section 728 (1) and 742 do not, in my opinion, affect the construction of Section 725. The former section permits any owner of property which should not have been seized to make a claim, while the reference to a "person in possession or occupation of any premises" in the latter section is not, I think, such a clear indication as to render it necessary, when construing this Chapter of the Civil Procedure Code as a whole, to say that goods in the possession of an occupier other than a tenant are in the apparent possession of the tenant.

The view I have formed of the meaning of "apparent possession" is not in conflict with the reported cases, *Fong See Kye v. Shaik Madar*, (4 S.S.L.R. 1) and *Re Chuah Eu Kay*, (4 S.S.L.R. 15), in both of which it was held that goods in premises that had been entirely sub-let could

not be in the "apparent possession" of the original tenant. It would not seem to make any difference in principle if the tenant retained a room in a house and sub-let the rest. Nor are my views in conflict with the decision in the unreported case of *Re Ooi Tiong Ham deceased* (Distress No. 35/28 Singapore) in which it was held that coal stacked on vacant land was in the apparent possession of the tenant.

That the tenant may be under contractual obligations to his landlord not to sub-let the premises does not seem to me to be material nor do I consider the landlord's state of knowledge regarding the actual occupancy of the premises or part of them or the real ownership of the goods to be in point, for I think the possession must be generally apparent and not apparent to the landlord in particular.

I have had the advantage of reading the judgment of the learned Acting Chief Justice, with whom I sat *in banco*, and I entirely agree that what has to be considered is the "ostensible physical possession," and it is with regret that I respectfully disagree as to what constitutes such possession. I also agree that the learned District Judge has no power to compel sub-tenants to pay any rent that is in arrear to the head tenant as a condition of the release of their goods seized in pursuance of a writ of distress issued on the application of the landlord in respect of rent payable to him by the head tenant.

For the reasons given I consider that the decision of the learned District Judge was right.

Order of District Judge affirmed.

Solicitors for the plaintiff—Allen & Gledhill.